CHERYL D. KEILY SBN# 94008
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982 (Direct) (213) 576-6905

## FILED

JAN 3 1 2011

DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of )

MORTGAGE BANK OF CALIFORNIA; and ANDREA MICHELLE MOSICH, individually, and as design-nated officer for Mortgage Bank of California,

Respondents.

No. H-36535 LA L-2010050841

STIPULATION & AGREEMENT

It is hereby stipulated by and between MORTGAGE BANK OF CALIFORNIA ("MORTGAGE BANK") and ANDREA MICHELLE MOSICH ("MOSICH"), individually, and as designated broker-officer of MORTGAGE BANK, (sometimes collectively referred to as "Respondents"), and the Respondents' attorney Michael Kushner, Esq., and the Complainant, acting by and through Cheryl Keily, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on March 22, 2010, in this matter.

1. All issues which were to be contested and all 1 evidence which was to be presented by Complainant and 2 Respondents at a formal hearing on the Accusation, which hearing 3 was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place 5 thereof be submitted solely on the basis of the provisions of 6 this Stipulation and Agreement. 7 2. Respondents have received, read and understood the 8 Statement to Respondent, the Discovery Provisions of the APA 10 and the Accusation filed by the Department of Real Estate 11 ("Department") in this proceeding. 12 3. On May 3, 2010, Respondents filed a Notice of 13 Defense, pursuant to Section 11506 of the Government Code for 14 the purpose of requesting a hearing on the allegations in the 15 Accusation. Respondents hereby freely and voluntarily withdraw 16 said Notice of Defense. Respondents acknowledge that they 17 understand that by withdrawing said Notice of Defense they will 18 thereby waive their right to require the Commissioner to prove 19 the allegations in the Accusation at a contested hearing held 20 in accordance with the provisions of the APA and that they will 21 waive other rights afforded to them in connection with the 22 hearing, such as the right to present evidence in defense of 23 24 the allegations in the Accusation and the right to crossexamine witnesses. 26 This Stipulation is based on the factual 27 allegations contained in the Accusation. In the interest of - 2 -

expedience and economy, Respondents choose not to contest these allegations, but to remain silent and understand that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

- 5. This Stipulation and Respondents' decision not to contest the Accusation are made for the purpose of reaching an agreed disposition of this proceeding, and are expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate, or another licensing agency of this state, another state or the federal government is involved and otherwise shall not be admissible in any other criminal or civil proceedings.
- 6. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.
- 7. Respondents have received, read and understand the "Notice Concerning Costs of Audits." Respondents understand that by agreeing to this Stipulation and Agreement, the findings set forth below in the Determinations of Issues become

final, and that the Commissioner may charge Respondents for the costs of the audits which lead to the disciplinary action.

Respondents understands that by agreeing to this Stipulation,

Respondents agree to pay, pursuant to Business and Professions

Code ("Code") Section 10148, the cost of both the original audits. The total cost of the both the original audits is

\$4,464.41.

#### DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

- 1. The conduct, acts or omissions of Respondent MORTGAGE BANK, as set forth in the Accusation, constitute cause to suspend or revoke the real estate license and license rights of Respondent MORTGAGE BANK under the provisions of Code Section 10177(d) for violation of Section 10145 of the Code in conjunction with Title 10, Chapter 6 of the California Code of Regulations ("Regulations"), Sections 2834 and 2951.
- 2. The conduct, acts or omissions of Respondent MOSICH, as set forth in the Accusation, constitute cause to suspend or revoke the real estate license and license rights of Respondent MOSICH under the provisions of Code Sections 10177(d) for violation of Code Section 10159.2.

ORDER

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WHEREFORE, THE FOLLOWING ORDER is hereby made:

- MORTGAGE BANK OF CALIFORNIA under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Decision from the effective date of this Decision; provided, however, that the entire period of said suspension shall be stayed for two (2) years upon the following terms and conditions:
- 1. Respondent MORTGAGE BANK OF CALIFORNIA shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
- 2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.
- ANDREA MICHELLE MOSICH, under the Real Estate Law are revoked;

  provided, however, a restricted real estate broker license shall
  be issued to Respondent pursuant to Section 10156.5 of the Code

  if Respondent makes application therefor and pays to the

Department the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 2 The Restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Code and to the following conditions, limitations and restrictions 5 imposed under the authority of Section 10156.6 of the Code: 1. The restricted license issued to Respondent may be 7 suspended prior to hearing by Order of the Commissioner in the 8 9 event of Respondent's conviction or plea of nolo contendere to a 10 crime which is substantially related to Respondent's fitness or capacity as a real estate licensee. 12 2. The restricted license issued to Respondent may be 13 suspended prior to hearing by Order of the Commissioner on 14 evidence satisfactory to the Commissioner that Respondent has 15 violated provisions of the Real Estate law, the Subdivided Lands 16 Law, Regulations of the Real Estate Commissioner or conditions 17 attaching to the restricted license. 18 3. Respondent shall not be eligible to apply for 19 issuance of an unrestricted real estate license nor for the 20 removal of any of the conditions, limitations or restrictions of 21 a restricted license until two (2) years have elapsed from the 22 effective date of this Decision. 23 24 III. All licenses and licensing rights of Respondent 25 ANDREA MICHELLE MOSICH are indefinitely suspended unless or 26 until Respondent provides proof satisfactory to the 27 Commissioner, of having taken and successfully completed the

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continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

IV. Respondent ANDREA MICHELLE MOSICH shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

V. Pursuant to Section 10148 of the Code, Respondent MORTGAGE BANK OF CALIFORNIA and Respondent ANDREA MICHELLE MOSICH shall pay the Commissioner's reasonable cost for (a) the audit which led to the disciplinary action, and (b) a subsequent audit to determine if Respondent MORTGAGE BANK OF CALIFORNIA has corrected the violations found in the Determination of Issues. In calculating the amount of the Commissioner' reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the

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activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the licenses of Respondent ANDREA MICHELLE MOSICH and MORTGAGE BANK OF CALIFORNIA pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

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DATED: De 27, 2010

CHERYL D. KEILY, Counsel DEPARTMENT OF REAL ESTATE

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine

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witnesses against me and to present evidence in defense and mitigation of the charges.

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Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondents. to the Department at the following telephone/fax number (213) 576-6917. Respondent agrees, acknowledges, and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Agreement. that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

DATED: DATED:

ANDREA MICHELLE MOSICH. Respondent

ANDREA MICHELLE MOSICH, as designated broker-officer, on behalf of Respondent MORTGAGE BANK OF CALIFORNIA

I have reviewed the Stipulation and Agreement as to form and content, and have advised my client accordingly.

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Michael Kushner, Esq. Attorney for Respondents andrea Michelle Mosich MORTGAGE BANK OF CALIFORNIA

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witnesses against me and to present evidence in defense and mitigation of the charges.

Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondents, to the Department at the following telephone/fax number (213) 576-6917. Respondent agrees, acknowledges, and understands that by electronically sending to the Department a fax copy of his actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

| 14 | DATED:   |
|----|--|
|    | ANDREA MICHELLE MOSICH,  |
| 15 | Respondent   |
|    |  |
| 16 | DATED: ANDREA MICHELLE MOSICH, as  |
| 17 | designated broker-officer,<br>on behalf of Respondent  |
| 18 | MORTGAGE BANK OF CALIFORNIA  |
| 19 | I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly. |
| 20 |  |
|    |  |
| 21 | DATED:   |
| 22 | Michael Kushner, Esq. Attorney for Respondents   |
| 23 | ANDREA MICHELLE MOSICH MORTGAGE BANK OF CALIFORNIA   |
|    | FIORIGAGE BANK OF CALIFORNIA   |
| 24 |  |
|    | 1,,,   |

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become MAR 02 2011 effective at 12 o'clock noon on \_ 2011. IT IS SO ORDERED \_\_\_\_ б JEFF DAV Real Estate Commissioner 1.0 

\_, 2011.

CHERYL D. KEILY SBN# 94008 Department of Real Estate 320 West 4th Street, Suite 350 Los Angeles, California 90013-1105

FILED

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DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of )

MORTGAGE BANK OF CALIFORNIA; and ANDREA MICHELLE MOSICH, individually, and as designnated officer for Mortgage Bank of California,

Respondents.

No. H-36535 LA

ACCUSATION

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MORTGAGE BANK OF CALIFORNIA (Respondent "MORTGAGE BANK") and ANDREA MICHELLE MOSICH (Respondent "MOSICH"), individually, and as designated broker-officer of MORTGAGE BANK, is informed and alleges as follows:

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The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

Respondent MORTGAGE BANK is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code"), as a real estate corporation acting by and through Respondent MOSICH as its designated broker-officer.

3.

Respondent MOSICH is presently licensed and/or has license rights under the Real Estate Law as a real estate broker and designated broker-officer of Respondent MORTGAGE BANK.

4.

At no time material herein has John Corry Davis

("Davis") been licensed by the Department in any capacity. On or
about July 24, 2002, a conditional real estate salesperson

license was issued to Davis. Thereafter, on or about March 11,

2006, a real estate salesperson license was issued to Davis. On
or about July 23, 2006, the real estate salesperson license of

Davis expired.

5.

At no time has Kevin Heckenmeyer ("Heckenmeyer") been license by the Department in any capacity.

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All further references to respondents herein include Respondents MORTGAGE BANK and MOSICH, and also include officers, directors, employees, agents and real estate licensees employed by or associated with MORTGAGE BANK and MOSICH, and who at all times herein mentioned were engaged in the furtherance of the business or operations of Respondents MORTGAGE BANK and MOSICH, and who were acting within the course and scope of their authority and employment.

7.

At all times material herein Respondents were engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers and/or real estate corporations in the State of California, within the meaning of Code Section 10131(d) of the Code, including soliciting borrowers and lenders and negotiating the terms of loans secured by real property between borrowers and third party lenders for or in expectation of compensation.

8.

At all times material herein Respondent MOSICH, as the officer designated by Respondent MORTGAGE BANK pursuant to Section 10211 of the Code, was responsible for the supervision and control of the activities conducted on behalf of Respondent MORTGAGE BANK by its officers and employees as necessary to secure full compliance with the Real Estate Law as set forth in Section 10159.2 of the Code.

## FIRST CAUSE OF ACCUSATION (Unlicensed Activity)

9.

On or about April 24, 2007, Davis negotiated the terms of a mortgage loan on behalf of borrowers David and Betty Comstock in connection with a loan brokered by Respondent MORTGAGE BANK to be secured by the real property located at 43745 7<sup>th</sup> Street East, Lancaster, California 93534. Respondent MORTGAGE BANK paid Davis a commission for the foregoing transaction in the amount of \$9,500.

10.

On or about June 22, 2007, Heckenmeyer negotiated a mortgage loan on behalf of borrower Lori Hout in connection with a loan brokered by Respondent MORTGAGE BANK to be secured by the real property located at 549 Bruin Drive, Riverside, California 92507. Respondent MORTGAGE BANK paid Davis a commission for the foregoing transaction in the amount of \$27,665.

11.

Based on the information contained in Paragraphs 9 and 10, above, Davis and Heckenmeyer performed and/or participated in the negotiation of the terms of a loan secured by real property, which activity requires a real estate broker license under the provisions of Code Sections 10131(a), during a period of time when neither Davis nor Heckenmeyer was licensed by the Department of Real Estate as a real estate broker nor employed as a real estate salesperson by a broker on whose behalf the

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activities were performed.

12.

Code by employing and/or compensating Davis and Heckenmeyer,

Respondent MORTGAGE BANK violated Section 10137 of the

individuals who were not licensed as real estate salespersons or as brokers, to perform activities requiring a license, which is cause for the suspension or revocation of the licenses and license rights of Respondent MORTGAGE BANK pursuant to Code Sections 10177(d) and/or 10177(g).

#### SECOND CAUSE OF ACCUSATION

(Audit Violations in Connection with Mortgage Loan Activities)

13.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 12, above.

 14.

On or about March 13, 2008, the Department completed an audit examination of the books and records of Respondent MORTGAGE BANK pertaining to its mortgage loan activities and covering the period from March 3, 2006, to January 31, 2008. The audit examination revealed violations of the Code and the Regulations, as set forth in the following paragraphs, and more fully discussed in Audit Report No. LA 070200, along with the exhibits and work papers attached to the audit report:

(a) Respondent MORTGAGE BANK failed to ensure that the Mortgage Loan Disclosure Statement was signed and dated in each instance by the loan agent negotiating the loan in

violation of Code Section 10240 and Section 2840 of the Regulations.

- (b) Respondent MORTGAGE BANK employed the services of four unlicensed individuals, Davis, Heckenmeyer, Loretta Rios and Jared Heckenmeyer, who acted as loan agents and were compensated by Respondent MORTGAGE BANK in violation of Code Section 10137.
- (c) Respondent MOSICH failed to have a system in place for regularly monitoring compliance by Respondent MORTGAGE BANK with the Real Estate Law in violation of Code Sections 10159.2 and 10177(h) and Section 2725 of the Regulations.

DISCIPLINE STATUTES AND REGULATIONS

15.

The conduct of Respondents MORTGAGE BANK and MOSICH described in Paragraph 14, above, violated the Code and the Regulations as set forth below:

|    | PARAGRAPH | PROVISIONS VIOLATED                |
|----|-----------|------------------------------------|
| 18 | 14(a)     | Code Section 10240 and 2840 of the |
| 20 |           | Regulations                        |
| 21 | 14 (b)    | Code Section 10137                 |
| 22 | 14(D)     |                                    |
| 23 | 14(c)     | Code Sections 10159.2 and 10177(h) |
| 24 |           | and Sections 2725 of the           |
| 25 |           | Regulations                        |

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license

rights of Respondents MORTGAGE BANK and MOSICH under the provisions of Code Sections 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence or incompetence.

THIRD CAUSE OF ACCUSATION

(Audit Violations in Connection with Broker Escrow Activities)

16.

Complainant hereby incorporates by reference the allegations set forth in Paragraphs 1 through 15, above.

17.

On or about April 3, 2008, the Department completed an audit examination of the books and records of Respondent MORTGAGE BANK pertaining to its broker escrow activities and covering the period from July 1, 2007, to December 31, 2007. The audit examination revealed violations of the Code and the Regulations, as set forth in the following paragraphs, and more fully discussed in Audit Report No. LA 070285, along with the exhibits and work papers attached to the audit report:

- (a) Respondent MORTGAGE BANK permitted two salespersons not licensed to Respondent to be authorized signatories on the trust account maintained in the name "Mortgage Bank of California Trust Account" at Comerica Bank ("Trust Account") by Respondent in violation of Code Section 10145 and Sections 2834 and 2951 of the Regulations.
- (b) Respondent MORTGAGE BANK permitted a nonlicensee to be an authorized signatory on the Trust Account

though Respondent had no fidelity bond coverage during the period July 1, 2007, to September 28, 2007, and thereafter had fidelity coverage with a deductible of \$25,000, in violation of Section 10145 of the Code and Sections 2834 and 2951 of the Regulations.

(c) Respondent MORTGAGE BANK failed to ensure that as to all transactions each principal in the transaction received a written statement of all disbursements together with the name of the person to whom any such disbursement was made in violation of Section 10145 of the Code and Section 2950(i) of the Regulations.

### DISCIPLINE STATUTES AND REGULATIONS

18.

The conduct of Respondent MORTGAGE BANK described in Paragraph 17, above, violated the Code and the Regulations as set forth below:

| 18 | PARAGRAPH | PROVISIONS VIOLATED                |
|----|-----------|------------------------------------|
| 19 | 17 (a)    | Code Section 10145 and Sections    |
| 20 |           | 2834 and 2951 of the Regulations   |
| 21 | 17 (b) ·  | Section 10145 of the Code and      |
| 22 |           | Sections 2834 and 2951 of the      |
| 23 |           | Regulations.                       |
| 24 | 17(c)     | Section 10145 of the Code and      |
| 25 |           | Section 2950(i) of the Regulations |
| 26 |           |                                    |

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of Respondent MORTGAGE BANK under the provisions of Code Sections 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence or incompetence.

# THIRD CAUSE OF ACCUSATION (Failure to Supervise)

19.

Complainant hereby incorporates the allegations set forth in Paragraphs 1 through 18, above.

20.

Respondent MOSICH ordered, caused, authorized or participated in the conduct of Respondent MORTGAGE BANK, as is alleged in this Accusation.

21.

The conduct, acts and/or omissions, of Respondent MOSICH, in allowing Respondent MORTGAGE BANK to violate the Real Estate Law, as set forth above, constitutes a failure by Respondent MOSICH, as the officer designated by a corporate broker licensee, to exercise the supervision and control over the activities of Respondent MORTGAGE BANK, as required by Code Section 10159.2, and is cause to suspend or revoke the real estate licenses and license rights of Respondent MOSICH under Code Sections 10177(d), 10177(g) and/or 10177(h).

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondent MORTGAGE BANK OF CALIFORNIA and Respondent ANDREA MICHELLE MOSICH, individually, and as designated broker-officer of MORTGAGE BANK, under the Real Estate Law, and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California this 22 day of March, 2010.

Robin Trujillo

Deputy Real Estate Commissioner

CC: MORTGAGE BANK OF CALIFORNIA ANDREA MICHELLE MOSICH Robin Trujillo Sacto.

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